

**Bill with  
Summary and Analysis**

**HB 4039**

*(Raise Smoking Age)*

**Sponsor:  
Adams Blue**



# HOUSE BILL No. 4039

January 15, 2019, Introduced by Reps. Brann, Hoadley, Vaupel, Sabo, Calley, Wittenberg and Pagan and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 1, 2a, and 4 (MCL 722.641, 722.642a, and 722.644), the title and sections 1 and 4 as amended by 2006 PA 236 and section 2a as added by 1992 PA 272, and by adding section 3a; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

TITLE

An act to prohibit the selling, giving, or furnishing of tobacco products **AND TOBACCO PARAPHERNALIA** to minors; ~~to prohibit the purchase, possession, or use of tobacco products by minors; to~~ regulate the retail sale of tobacco products **AND TOBACCO PARAPHERNALIA**; to prescribe penalties; ~~and to prescribe the powers~~ and duties of certain state agencies and departments; **AND TO**

1 **PROVIDE FOR THE POWERS AND DUTIES OF CERTAIN STATE AND LOCAL**  
2 **GOVERNMENTAL ENTITIES.**

3       Sec. 1. (1) A person shall not sell, give, or furnish a  
4 tobacco product **OR TOBACCO PARAPHERNALIA** to a minor. A person who  
5 violates this subsection is ~~guilty of~~ **RESPONSIBLE FOR** a misdemeanor  
6 ~~punishable by a~~ **STATE CIVIL INFRACTION AND MAY BE ORDERED TO PAY A**  
7 **CIVIL** fine of not **LESS THAN \$1,000.00 OR MORE THAN \$2,500.00 FOR**  
8 **THE FIRST VIOLATION, AND NOT LESS THAN \$2,500.00 OR more than**  
9 ~~\$50.00 for each violation.~~ **\$5,000.00 FOR A SECOND OR SUBSEQUENT**  
10 **VIOLATION OCCURRING WITHIN 24 MONTHS AFTER A PREVIOUS VIOLATION OF**  
11 **THIS SUBSECTION.**

12       (2) ~~A~~ **SUBJECT TO SUBSECTION (3),** A person ~~who~~ **THAT** sells  
13 tobacco products **OR TOBACCO PARAPHERNALIA** at retail shall post ~~in~~  
14 ~~a place close to the point of sale and conspicuous to both~~  
15 ~~employees and customers,~~ a sign produced by the department of  
16 ~~community health~~ **AND HUMAN SERVICES** that includes the following  
17 statement:

18       "The ~~purchase~~ **SALE** of ~~A~~ tobacco products ~~by a minor~~ **PRODUCT OR**  
19 **TOBACCO PARAPHERNALIA TO AN INDIVIDUAL WHO IS** under ~~18~~ **21** years of  
20 age and the ~~provision of tobacco products to a minor~~ are **IS**  
21 prohibited by law.". ~~A minor unlawfully purchasing or using tobacco~~  
22 ~~products is subject to criminal penalties."~~

23       (3) ~~If the~~ **A PERSON THAT SELLS TOBACCO PRODUCTS OR TOBACCO**  
24 **PARAPHERNALIA AT RETAIL SHALL ENSURE THAT THE** sign required under  
25 subsection (2) ~~is more than 6 feet from the point of sale, it shall~~  
26 **IS POSTED IN A PLACE THAT IS WITHIN 6 FEET OF EACH POINT OF SALE,**  
27 **IS UNOBSTRUCTED, AND IS CONSPICUOUS TO BOTH EMPLOYEES AND**

1 **CUSTOMERS. THE SIGN REQUIRED UNDER SUBSECTION (2) MUST** be 5-1/2  
2 inches by 8-1/2 inches, and the statement required under subsection  
3 (2) shall ~~MUST~~ be printed in 36-point boldfaced type. ~~If the sign~~  
4 ~~required under subsection (2) is 6 feet or less from the point of~~  
5 ~~sale, it shall be 2 inches by 4 inches and the statement required~~  
6 ~~under subsection (2) shall be printed in 20-point boldfaced type.~~

7 (4) The department of ~~community health~~ **AND HUMAN SERVICES**  
8 shall produce the sign required under subsection (2) and have  
9 adequate copies of the sign ready for distribution to licensed  
10 wholesalers, secondary wholesalers, and unclassified acquirers of  
11 tobacco products free of charge. Licensed wholesalers, secondary  
12 wholesalers, and unclassified acquirers of tobacco products shall  
13 obtain copies of the sign from the department of ~~community health~~  
14 **AND HUMAN SERVICES** and distribute them free of charge, upon  
15 request, to persons ~~who~~ **THAT** are subject to subsection (2). The  
16 department of ~~community health~~ **AND HUMAN SERVICES** shall provide  
17 copies of the sign free of charge, upon request, to persons subject  
18 to subsection (2) ~~who~~ **THAT** do not purchase their supply of tobacco  
19 products from wholesalers, secondary wholesalers, and unclassified  
20 acquirers of tobacco products licensed under the tobacco products  
21 tax act, 1993 PA 327, MCL 205.421 to 205.436.

22 (5) It is an affirmative defense to a ~~charge~~ **CITATION ISSUED**  
23 under subsection (1) that the defendant ~~had in force at the time of~~  
24 ~~arrest and continues to have in force a written policy to prevent~~  
25 ~~the sale of tobacco products to persons under 18 years of age and~~  
26 ~~that the defendant enforced and continues to enforce the policy.~~  
27 **DEMANDED, WAS SHOWN, AND REASONABLY RELIED ON A GOVERNMENT-ISSUED**

1 PHOTOGRAPHIC IDENTIFICATION THAT ESTABLISHED THAT THE INDIVIDUAL  
 2 WAS AT LEAST 21 YEARS OF AGE BEFORE THE DEFENDANT SOLD, GAVE, OR  
 3 FURNISHED THE TOBACCO PRODUCT OR TOBACCO PARAPHERNALIA TO THE  
 4 INDIVIDUAL. A defendant who proposes to offer evidence of the  
 5 affirmative defense described in this subsection shall file ~~and~~  
 6 ~~serve~~ **A WRITTEN** notice of the defense ~~, in writing, upon~~ **WITH** the  
 7 court and **SERVE A COPY OF THE NOTICE ON** the prosecuting attorney.  
 8 The **DEFENDANT SHALL FILE AND SERVE THE** notice ~~shall be served~~ not  
 9 less than 14 days before the **HEARING** date. ~~set for trial.~~

10 (6) A prosecuting attorney who proposes to offer testimony to  
 11 rebut the affirmative defense described in subsection (5) shall  
 12 file ~~and serve~~ a **WRITTEN** notice of rebuttal ~~, in writing, upon~~ **WITH**  
 13 the court and **SERVE A COPY OF THE NOTICE ON** the defendant. The  
 14 **PROSECUTING ATTORNEY SHALL FILE AND SERVE THE** notice ~~shall be~~  
 15 ~~served~~ not less than 7 days before the **HEARING** date ~~set for trial~~  
 16 and shall ~~contain~~ **INCLUDE IN THE NOTICE** the name and address of  
 17 each rebuttal witness.

18 (7) Subsection (1) does not apply to the handling or  
 19 transportation of a tobacco product **OR TOBACCO PARAPHERNALIA** by a  
 20 minor under the terms of that minor's employment.

21 Sec. 2a. (1) ~~Except as otherwise provided in subsection (2), a~~  
 22 **A person who THAT** sells tobacco products **OR TOBACCO PARAPHERNALIA**  
 23 at retail shall not sell a cigarette separately from its package.  
 24 ~~(2) Subsection (1) does not apply to a person who sells~~  
 25 ~~tobacco products at retail in a tobacco specialty retail store or~~  
 26 ~~other retail store that deals exclusively in the sale of tobacco~~  
 27 ~~products and smoking paraphernalia.~~

1           (2) ~~(3)~~A person ~~who~~ **THAT** violates subsection (1) is guilty of  
2 a misdemeanor ~~7~~punishable by a fine of not more than \$500.00 for  
3 each offense.

4           **SEC. 3A. A CITY, TOWNSHIP, VILLAGE, COUNTY, OTHER LOCAL UNIT**  
5 **OF GOVERNMENT, OR POLITICAL SUBDIVISION OF THIS STATE MAY ADOPT AN**  
6 **ORDINANCE OR A REGULATION THAT REGULATES THE SALE OF TOBACCO**  
7 **PRODUCTS OR TOBACCO PARAPHERNALIA IN A MANNER THAT IS AS**  
8 **RESTRICTIVE OR MORE RESTRICTIVE THAN THIS ACT.**

9           Sec. 4. As used in this act:

10           (A) "ELECTRONIC DEVICE" MEANS A PRODUCT THAT DELIVERS NICOTINE  
11 OR ANOTHER SIMILAR SUBSTANCE THAT IS INTENDED FOR HUMAN CONSUMPTION  
12 AND THAT CAN BE USED BY AN INDIVIDUAL TO SIMULATE SMOKING THROUGH  
13 INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT. ELECTRONIC DEVICE  
14 INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC CIGARETTE, AN  
15 ELECTRONIC CIGAR, AN ELECTRONIC PIPE, OR AN ELECTRONIC HOOKAH.

16           (B) "GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION" MEANS A  
17 DOCUMENT THAT INCLUDES A PHOTOGRAPH AND THE DATE OF BIRTH OF AN  
18 INDIVIDUAL THAT IS ISSUED BY A FEDERAL, STATE, OR LOCAL UNIT OF  
19 GOVERNMENT, OR A POLITICAL SUBDIVISION OR AGENCY OF A FEDERAL,  
20 STATE, OR LOCAL UNIT OF GOVERNMENT.

21           (C) ~~(a)~~"Minor" means an individual ~~under 18~~**WHO IS LESS THAN**  
22 **21 years of age.**

23           (D) "PERSON" MEANS AN INDIVIDUAL, FIRM, PARTNERSHIP, LIMITED  
24 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, CORPORATION,  
25 OR OTHER LEGAL ENTITY.

26           (E) ~~(b)~~"Person ~~who~~ **THAT** sells tobacco products **OR TOBACCO**  
27 **PARAPHERNALIA** at retail" means a person whose ordinary course of

1 business consists, in whole or in part, of the retail sale of  
2 tobacco products **OR TOBACCO PARAPHERNALIA** subject to state sales  
3 tax.

4 ~~—— (c) "Public place" means a public street, sidewalk, or park or~~  
5 ~~any area open to the general public in a publicly owned or operated~~  
6 ~~building or public place of business.~~

7 **(F) "TOBACCO PARAPHERNALIA" MEANS AN ITEM DESIGNED OR MARKETED**  
8 **FOR THE CONSUMPTION, USE, OR PREPARATION OF A TOBACCO PRODUCT.**

9 **(G) ~~(d)~~"Tobacco product" means a product that contains OR IS**  
10 **MADE OR DERIVED FROM tobacco OR NICOTINE and THAT is intended for**  
11 **human consumption, ~~including, WHETHER SMOKED, HEATED, CHEWED,~~**  
12 **ABSORBED, DISSOLVED, INHALED, SNORTED, SNIFFED, OR INGESTED BY ANY**  
13 **OTHER MEANS. TOBACCO PRODUCT INCLUDES, but IS not limited to,**  
14 **cigarettes, ~~noncigarette smoking tobacco, or smokeless tobacco, as~~**  
15 **~~those terms are defined in section 2 of the tobacco products tax~~**  
16 **act, 1993 PA 327, MCL 205.422, and cigars, LITTLE CIGARS, CHEWING**  
17 **TOBACCO, PIPE TOBACCO, SHISHA, SNUFF, OR AN ELECTRONIC DEVICE.**  
18 **TOBACCO PRODUCT INCLUDES A COMPONENT, PART, OR ACCESSORY OF A**  
19 **TOBACCO PRODUCT REGARDLESS OF WHETHER THE COMPONENT, PART, OR**  
20 **ACCESSORY IS SOLD SEPARATELY. TOBACCO PRODUCT DOES NOT INCLUDE A**  
21 **PRODUCT SPECIFICALLY APPROVED BY THE UNITED STATES FOOD AND DRUG**  
22 **ADMINISTRATION FOR SALE AS A TOBACCO CESSATION PRODUCT THAT IS**  
23 **BEING MARKETED AND SOLD SOLELY FOR THE APPROVED PURPOSE.**

24 ~~—— (c) "Use a tobacco product" means to smoke, chew, suck,~~  
25 ~~inhale, or otherwise consume a tobacco product.~~

26 Enacting section 1. Section 2 of the youth tobacco act, 1915  
27 PA 31, MCL 722.642, is repealed.



1           Enacting section 2. This amendatory act takes effect 180 days  
2 after the date it is enacted into law.

# Legislative Analysis



## PROHIBITING THE SALE OF TOBACCO AND TOBACCO PARAPHERNALIA TO ANYONE UNDER 21

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

House Bill 4039 (H-1) as referred to Committee  
Sponsor: Reps. Brann, Hoadley, Vaupel, Sabo, Calley, Witten

Analysis available at  
<http://www.legislature.mi.gov>

Committee: Regulatory Reform  
Complete to 1-15-19

### SUMMARY:

House Bill 4039 would amend the Youth Tobacco Act to prohibit selling or providing tobacco products, tobacco paraphernalia, vapor products, and alternative nicotine products (such as e-cigarettes) to anyone under the age of 21. The bill would also implement enhanced regulations on the retail sale of tobacco products and tobacco paraphernalia.

### House Bill 4039

Prohibition of the sale of tobacco & related products to anyone under 21.

House Bill 4039 would prohibit selling, giving, or furnishing *tobacco products* or *alternative nicotine products* to anyone under the age of 21. Violators would be guilty of a civil infraction punishable by a fine of to \$1000-\$2,500 for a first offense, \$5,000 for second and subsequent offenses within a two year period.

*Tobacco product* would mean a product that is made or derived from tobacco or nicotine and that is intended for human consumption, whether smoke, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means.

*Tobacco paraphernalia* would mean an item designed or marketed for the consumption, use, or preparation of tobacco product.

*Electronic device* would mean a product that delivers nicotine or another similar substance that is intended for human consumption and that can be used by an individual to simulate smoking through inhalation of vapor or aerosol from the product, including devices like electronic cigarettes, cigars, pipes, and hookahs.

Substantial Increase in Penalties: An individual who violated the above prohibitions would be responsible for a state civil infraction:

- For a first offense, the individual would be responsible for a state civil infraction and would have to pay a fine of \$1,000-\$2,500.
- For a second offense within 24 months, the individual would be responsible for a state civil infraction and would have to pay a fine of up to \$5,000.
- For any subsequent offense within 24 months, the individual would be responsible for a state civil infraction and would have to pay a fine of up to \$5,000.

#### Regulation of the sale of tobacco products

Under the bill, before selling, offering for sale, giving, or furnishing a tobacco product or tobacco paraphernalia to an individual, a person would need to verify that the individual is at least 21 years of age by examining a government-issued photographic ID that establishes that the individual is at least 21 years old.

Retail sellers of tobacco products would be required to post, in a conspicuous location near the point of sale, a sign designed and produced by the Department of Health and Human Services that warns persons under 21 of the criminal penalties incurred by unlawfully purchasing tobacco products.

#### Enhanced Evidentiary Requirements for Defense:

Under the bill, a defendant who is charged with selling tobacco products or paraphernalia to persons under the age of 21, may use the evidence as an affirmative defense against the charges by providing a written notice of the defense to the court and the prosecuting attorney no later than 14 days before the date set for the trial. Rather than providing proof of a written policy of compliance, this bills requires proof that the retailer demanded, was shown, and reasonably relied on a government-issued photographic identification in order to prevent unlawful sale. If the prosecuting attorney wishes to rebut this affirmative defense, he or she may do so by serving a notice of rebuttal in writing to the court and to the defendant no later than 7 days before the date set for the trial.

MCL 722.641 et seq.

#### **FISCAL IMPACT:**

The bills would have an indeterminate fiscal impact on the state and on local units of government. Costs could be incurred by the judiciary and local court systems. Costs would depend on how provisions of the bills affect caseloads and related administrative costs. Revenues could be increased under the bills as new civil infractions would be established and a number of current fines would be increased. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Revenue collected from payment of civil infraction penalties is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

A loss of revenue for businesses is anticipated but loss calculations are indeterminate at present.

The bills would have modest cost implications for the Department of Health and Human Services (DHHS) to modify signs made available to wholesalers and retailers, to modify related training and instructional materials, and to support related outreach and training to those entities. Signs and training materials are currently made available through a DHHS publications clearinghouse as downloadable pdfs and PowerPoints.

Supporting Arguments:

- Tobacco use continues to be the leading cause of preventable death worldwide.
- Using nicotine at a young age has also been proven to negatively impact brain development and increase the risk of developing addictive behaviors.
- Studies have shown that those who begin smoking in college continued to smoke four years or more later, even if they had originally intended to quit.
- In 2015, a report from the Institute of Medicine concluded that raising the minimum legal age for purchasing tobacco would reduce tobacco use initiation among 15-17 year olds and would improve the overall health of citizens nationwide.
- Since 2015, five states, Washington, D.C., and Guam have passed laws raising the legal smoking age to 21. Minimal changes are required by law enforcement and retailers to implement this law in Michigan, and the long-term health benefits to young people across the state are substantial.

Opposing Arguments:

- Many opponents of Tobacco 21 laws focus on whether it is appropriate in the first place for the government to prohibit adults from purchasing products that are otherwise legal for adults.
- The bill does not address current users and addicts who are between 18-21. For example, a 19 year old addict who currently uses tobacco legally will now be criminalized for acting on what was a legal addiction when he first began using the substance.
- Some would argue that the government is picking and choosing which addictive substances to regulate; caffeine is highly addictive and has negative health effects, but is legal even for minors.
- This bill also has stringent penalties for retailers of tobacco goods but leaves certain questions, like the criminal liability of the individual customer, largely undressed.
- This bill substantially increases the burden of proof required for retailers to prove their innocence, rather than upholding the spirit of innocent until proven guilty.
- Additionally, revenues from taxes on tobacco are a valuable income source for the state. Others are concerned that decreasing that revenue stream without a plan to replace it may have a negative fiscal impact.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.